

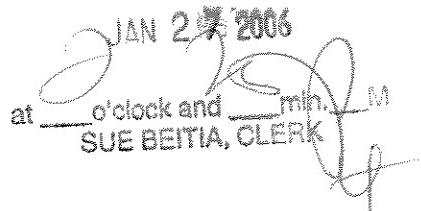
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WITNESS IN THE
 UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

JAN 27 2006
 at 10 o'clock and 30 min. M
 SUE BEITIA, CLERK



Attorneys for Defendants
 WILLIAM P. BADUA
 SPENCER ANDERSON
 and JEFFREY OMAI

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

OFELIA COLOYAN,

) CIVIL NO. CV03-476 KSC

Plaintiff,

)

vs.

) DEFENDANTS

WILLIAM P. BADUA;
 JEFFREY OMAI;
 SPENCER ANDERSON;
 NEIL PANG;
 and DOES 5-10,

) WILLIAM P. BADUA,

Defendants.

) JEFFREY OMAI AND

) SPENCER ANDERSON'S FINAL

) PRETRIAL STATEMENT;

) CERTIFICATE OF SERVICE

)

) Pretrial Conference:

) Date: February 3, 2006

) Time: 11:00 a.m.

) Judge Honorable Kevin S.C. Chang

)

) TRIAL DATE:

Week of March 14, 2006

DEFENDANTS WILLIAM P. BADUA, JEFFREY OMAI AND
SPENCER ANDERSON'S FINAL PRETRIAL STATEMENT

Defendants WILLIAM P. BADUA, JEFFREY OMAI AND SPENCER ANDERSON (hereinafter collectively referred to as "Defendants"), by and through their attorneys Carrie K.S. Okinaga, Corporation Counsel, and Kendra K. Kawai, Deputy Corporation Counsel, and pursuant to Local Rules of the United States District Court for the District of Hawai'i Rule 16.6, hereby submit their Final Pretrial Statement as follows:

A. PARTY

Officers William P. Badua, Jeffrey Omai and Spencer Anderson.

B. JURISDICTION OF VENUE

Defendants do not contest jurisdiction and venue.

C. SUBSTANCE OF ACTION

Plaintiff Ofelia Coloyan (hereinafter "Plaintiff") claims that her constitutional rights were violated when Defendants allegedly searched her home on June 3, 2003, over her objection and without her consent.

In her Fourth Amended Complaint, Plaintiff has alleged causes of action, which include violations of the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Section 7 of the Constitution of the State of Hawai'i; as well as emotional distress, difficulty eating and sleeping, mental anguish, anxiety, embarrassment, humiliation, and shame.

Defendants deny Plaintiff's allegations. Officer Badua contends that he informed Plaintiff that he had an arrest warrant for Allan Coloyan (hereinafter "the suspect"). After Plaintiff informed Officer Badua that the suspect was not home, Officer Badua asked Plaintiff for permission to enter her home for the purpose of verifying that the suspect was not present within her home, and she consented to Defendants entering and checking her residence. Defendants contend that they did a quick search of Plaintiff's home.

D. DISPUTED AND UNDISPUTED FACTS

It is undisputed that on the date of the incident that Defendants went to Plaintiff's home in Ewa Beach looking for Allan Coloyan, Plaintiff's son. It is also undisputed that Allan Coloyan was not present inside Plaintiff's home on that date.

The disputed issues in this case are the following:

1. Whether or not Plaintiff consented to the search of her home by Defendants.
2. What time of day Defendants were present at Plaintiff's home on the date of the incident.
3. Whether Allan Coloyan resided at Plaintiff's home.
4. The amount of time that Defendants were inside Plaintiff's home.
5. Whether or not Defendants spoke to Plaintiff's neighbors and the content of what was said to those neighbors.

E. RELIEF PRAYED

Plaintiff seeks general and punitive damages against Defendants.

Defendants seek dismissal of this lawsuit and an award of costs and attorneys' fees.

F. POINTS OF LAW

Defendants believe that the actions of the officers are protected by the principle of qualified immunity. Qualified immunity bars civil damage claims against defendant sued in his individual capacity provided that the defendant was performing a discretionary function and did not violate a clearly established constitutional or statutory right of which a reasonable person would have known.

Jackson v. City of Bremerton, 268 F.3d 646, 650 (9th Cir. 2001); see also Hunter v. Bryant, 502 U.S. 224, 227, 112 S.Ct. 534, 536 (1991); Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151 (2001); Sinaloa Lake Owners Ass'n v. City of Simi Valley, 70 F.3d 1095, 1099 (9th Cir. 1995).

Defendants also believe that the individual officers are protected by a qualified immunity under Hawaii law. Nonjudicial governmental officials performing a public duty enjoy the protection of a qualified immunity defense when that official is sued under state law. Pahk v. State of Hawaii, 109 F.Supp.2d 1262, 1269 (D.Haw. 2000). Plaintiff has the burden of adducing clear and convincing proof that defendant was motivated by malice and not be an otherwise proper purpose.

Medeiros v. Kondo, 55 Haw. 499, 504 (1974); see also Wong v. City and County of Honolulu, 333 F. Supp. 2d 942 (D. Haw. 2004).

Defendants preserve any and all defenses as set out in their Answers to Plaintiff's Complaint.

G. PREVIOUS MOTIONS

The following motions and their dispositions have been made in this action:

1. Motion for Leave to File Fourth Amended Complaint Filed December 17, 2004, withdrawn without prejudice on January 13, 2006.

2. Plaintiff's Motion for Leave to File Fourth Amended Complaint Filed May 2, 2005, granted in part and denied in part on June 6, 2005.

3. Defendant Neil Pang's Motion for Summary Judgment filed October 12, 2005, granted on November 22, 2005.

H. WITNESSES

City reserves the right to call the following witnesses:

1. Ofelia Coloyan
c/o Jack Schweigert, Esq.
550 Halekauwila Street, Room 309
Honolulu, Hawaii 96813

Plaintiff is expected to testify as to her knowledge and information regarding liability and alleged damages.

2. Steven M.C. Lum, M.D.
30 Aulike Street, Suite 303
Kailua, Hawaii 96734

Dr. Lum is expected to testify regarding damages, including but not limited to his diagnosis, care and treatment of Plaintiff.

3. Byron A. Eliashof, M.D.
615 Piikoi Street, Suite 1509
Honolulu, Hawaii 96814

Dr. Eliashof is a psychiatrist who conducted an independent psychiatric examination of Plaintiff and is expected to testify regarding damages.

4. Officer William P. Badua
c/o Department of the Corporation Counsel
Kendra K. Kawai, Esq.
Deputy Corporation Counsel
530 South King Street, Room 110
Honolulu, Hawaii 96813

Officer Badua is a defendant and is expected to testify as to events that led up to and occurred on the date of the incident, and also as to liability and damages.

5. Officer Jeffrey Omai
c/o Department of the Corporation Counsel
Kendra K. Kawai, Esq.
Deputy Corporation Counsel
530 South King Street, Room 110
Honolulu, Hawaii 96813

Officer Omai is a defendant and is expected to testify as to events that led up to and occurred on the date of the incident, and also as to liability and damages.

6. Officer Spencer Anderson
c/o Department of the Corporation Counsel
Kendra K. Kawai, Esq.
Deputy Corporation Counsel
530 South King Street, Room 110
Honolulu, Hawaii 96813

Officer Anderson is a defendant and is expected to testify as to events that led up to and occurred on the date of the incident, and also as to liability and damages.

9. Officer Neil Pang
c/o Honolulu Police Department
Kalihi Station
865 Kamehameha IV Road
Honolulu, Hawaii 96819

Officer Pang is expected to testify as to events that led up to and occurred on the date of the incident, and also as to liability and damages.

10. Officer Donald Stafford
c/o Honolulu Police Department
Kalihi Station
1865 Kamehameha IV Road
Honolulu, Hawaii 96819

Officer Stafford is expected to testify as to events that led up to and occurred on the date of the incident, and also as to liability and damages.

11. Officer Darren Nihei
c/o Honolulu Police Department
Kalihi Station
1865 Kamehameha IV Road
Honolulu, Hawaii 96819

Officer Nihei is expected to testify as to events that led up to and occurred on the date of the incident, and also as to liability and damages.

12. Officer Sharolyn Rodrigues-Wong
c/o Honolulu Police Department
Kalihi Station
1865 Kamehameha IV Road
Honolulu, Hawaii 96819

Officer Rodrigues-Wong is expected to testify as to events that led up to and occurred on the date of the incident, and also as to liability and damages.

13. Officer Detrich Kamakani
c/o Honolulu Police Department
Kalihi Station
1865 Kamehameha IV Road
Honolulu, Hawaii 96819

Officer Kamakani is expected to testify as to events that led up to and occurred on the date of the incident, and also as to liability and damages.

14. Sergeant Theodore Chun
c/o Honolulu Police Department
Kalihi Station
1865 Kamehameha IV Road
Honolulu, Hawaii 96819

Sergeant Chun is expected to testify as to liability and damages.

15. Custodian of Records and/or Authorized Representative
Castle Medical Center
646 Ulukahiki Street
Kailua, Hawaii 96734

The Custodian of Records and/or Authorized Representative is/are expected to testify as to the authenticity of the records, reports, documents, and other tangible objects.

16. Custodian of Records and/or Authorized Representative
The Wackenhut Corporation
3375 Koapaka Street, Suite D-105
Honolulu, Hawaii 96819

The Custodian of Records and/or Authorized Representative is/are expected to testify as to the authenticity of the records, reports, documents, and other tangible objects, and as to the training subjects and materials covered during orientation during the applicable time period of Plaintiff's employment.

17. Donald Meinel and/or Other Representative
Department of the Corporation Counsel
City and County of Honolulu
530 S. King Street, Room 110
Honolulu, Hawaii 96813

Mr. Meinel and/or Other Representative is/are expected to testify as to the authenticity of the pictures and video taken during the inspection of Plaintiff's home in Ewa Beach.

18. Michael Kawahara, Esq. and/or Other Representative
Office of the U.S. Attorney
PJKK Federal Bldg.
300 Ala Moana Blvd., Rm. 6100
Honolulu, Hawaii 96850

Mr. Kawahara and/or Other Representative is/are expected to testify as to the existence and/or authenticity of the arrest warrant for Allan Coloyan.

19. Any and all individuals identified in Plaintiff's initial disclosures, Final

Pretrial Statement, other appropriate pleadings filed in this matter, in discovery responses provided by any party to this action and any other witnesses learned of through further discovery.

20. Defendants reserve the right to add any other witnesses as necessary.
21. Defendants reserve the right to name and call rebuttal witnesses as necessary.

I. EXHIBITS, SCHEDULES AND SUMMARIES

Exhibits include but are not limited to the following:

1. Report by Byron Eliashof, M.D. dated August 10, 2005. Sponsoring witness will be Dr. Eliashof.
2. Curriculum Vitae of Byron Eliashof, M.D. Sponsoring witness will be Dr. Eliashof.
3. Selected medical records from Steven M.C. Lum, M.D. relating to the diagnosis, care and treatment of Plaintiff. Sponsoring witness will be Dr. Lum.
4. The records, reports, documents and the training subjects and materials pertaining to Plaintiff's employment produced by the Wackenhut Corporation. Sponsoring witness will be the custodian of records from the Wackenhut Corporation and/or Authorized Representative.
5. Records produced by Castle Medical Center pertaining to Plaintiff's employment. Sponsoring witness will be the Custodian of Records from Castle Medical Center.

6. Federal arrest warrant for Allan Coloyan regarding Case Number: CR 03-00273 DAE, Sealed by the Order of the Court. Sponsoring witness(es) will be Officer Badua, Mr. Kawahara and/or Other Representative.
7. Plaintiff's Response to Defendant William Badua's First Request for Answers to Interrogatories to Plaintiff, dated September 2, 2004, for purposes of cross-examination. Sponsoring witness will be Plaintiff.
8. Defendant [William P. Badua]'s Response to Plaintiff's First Request for Answers to Interrogatories, dated February 25, 2005. Sponsoring witness will be Officer Badua.
9. Drivers License General Root Inquiry for Allan Coloyan, dated February 2, 2005. Sponsoring witness will be Officer Badua.
10. Law Records Management System printout for Allan Coloyan. Sponsoring witness will be Officer Badua.
11. CJIS, Hawaii Criminal Justice Inquiry, Full Rap Sheet for Allan Coloyan, dated February 2, 2005. Sponsoring witness will be Officer Badua.
12. Printout regarding Allan Coloyan's last known address, dated February 2, 2005. (Bate stamped as C00007-C000010) Sponsoring witness will be Officer Badua.

13. Information table kept by Officer Badua pertaining to Allan Coloyan's whereabouts. (Date stamped as C000011)
Sponsoring witness will be Officer Badua.
14. Photos to be taken at Plaintiff's home. Sponsoring witness(es) will be Plaintiff, Donald Meinel and/or other representative.
15. Video to be taken at Plaintiff's home. Sponsoring witness(es) will be Plaintiff, Donald Meinel and/or other representative.
16. Other exhibits to be determined.

J. FURTHER DISCOVERY OR MOTIONS

Discovery is almost completed in this case. Defendants have noticed the deposition of Alejandro Coloyan, Jr. and the Rule 34 inspection of Plaintiff's home, but the deposition and inspection were continued and will be rescheduled. Defendants also submitted interrogatory and admissions requests to Plaintiff in December 2005.

K. STIPULATIONS

The parties have not entered into any stipulations.

L. AMENDMENTS, DISMISSAL

Defendants do not have any proposed amendments or dismissals at this time. However, Defendants reserve the right to raise proposed amendments and/or dismissals, given that discovery is still being conducted.

M. SETTLEMENT DISCUSSION

The parties are scheduled to attend a further settlement conference with the Honorable Kevin S.C. Chang on February 3, 2006 at 11:00 a.m.

N. AGREED STATEMENT

In light of the polar positions as to the facts in this case, Defendants do not believe that the parties will be able to agree upon a statement of facts.

O. BIFURCATION, SEPARATE TRIAL OF ISSUES

Defendants' position is that bifurcation or a separate trial of specific issues is neither feasible nor desired.

P. REFERENCE TO MASTER OR MAGISTRATE JUDGE

On June 17, 2004 by consent of the parties, this case was referred to the Honorable Kevin S.C. Chang, United States Magistrate Judge to conduct all proceedings and order the entry of judgment.

Q. APPOINTMENT AND LIMITATION OF EXPERTS

Appointment by the Court of an impartial expert witness and limitation of experts are not necessary at this time.

R. TRIAL

Jury trial is currently scheduled for March 14, 2006, at 9:00 a.m. before the Honorable Kevin S.C. Chang.

S. ESTIMATE OF TRIAL TIME

Defendants estimate that the trial of this case will take approximately 6-8 trial days.

T. CLAIMS OF PRIVILEGE AND WORK PRODUCT

None at this time.

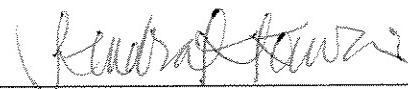
U. MISCELLANEOUS

There are no other subjects relevant to the trial of this action or proceeding, that are material to its just, efficient, and economical determination at this time.

DATED: Honolulu, Hawai'i, January 27, 2005.

CARRIE K.S. OKINAGA
Corporation Counsel

By:


KENDRA K. KAWAI
Deputy Corporation Counsel

Attorney for Defendants
WILLIAM P. BADUA
JEFFREY OMAI
SPENCER ANDERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

OFELIA COLOYAN,) CIVIL NO. 03-476 KSC
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Plaintiff,) CERTIFICATE OF SERVICE
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vs.)
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WILLIAM P. BADUA;)
JEFFREY OMAI;)
SPENCER ANDERSON;)
NEIL PANG;)
and DOES 5-10,)
)
Defendants.)
)
)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the within was duly served by United States mail, postage prepaid to the following individuals at their last known address on January 27, 2006:

JACK SCHWEIGERT, ESQ.
550 Halekauwila Street, Room 309
Honolulu, Hawaii 96813

ARTHUR E. ROSS, ESQ.
126 Queen Street, Suite 210
Honolulu, Hawaii 96813

RORY SOARES TOOMEY
1088 Bishop Street, Suite 1004
Honolulu, Hawaii 96813

Attorneys for Plaintiff
OFELIA COLOYAN

DATED: Honolulu, Hawai'i, January 27, 2006.

CARRIE K.S. OKINAGA
Corporation Counsel

By:



KENDRA K. KAWAI
Deputy Corporation Counsel

Attorney for Defendants
WILLIAM P. BADUA
JEFFREY OMAI
SPENCER ANDERSON